

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**EARL KEYES, Individually and on  
behalf of others similarly situated**

**PLAINTIFF**

**VS.**

**Civil Action No. 4:96cv279-D-B**

**THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA**

**DEFENDANT**

# MEMORANDUM OPINION

Respectfully submitted,  
Gardline Insurance Company  
of America (Gardline) is the Southern District of Mississippi  
involvement in the case.

District Court for the Southern District of Mississippi.

I. TRANSFER OF VENEUE PURSUANT TO 28 U.S.C. § 1

For the convenience of the parties and witnesses, in the court may transfer any civil action to any other district to have been brought.

28U.S.C. § 1404(a). "Decisions to effect 1404(a) transfers of the trial judge, and review of a transfer is limited to an abuse of discretion." Aircraft Corp., 886 F.2d 758, 761 (5th Cir. 1989) (quoting 845 F.2d 523, 528 (5th Cir. 1988)). The purpose of the venue rule is to avoid waste of time, energy, and money and to protect litigants, with unnecessary inconvenience and expense." Gundle Linin, 844 F. Supp. 1163, 1165 (S.D. Tex. 1994) (citing Van Dusen v. 11 L.Ed.2d 945 (1964)). In order to establish that a transfer is appropriate, one must demonstrate that the balance of convenience and justice weighs in favor of transfer." Gundle, 844 F. Supp. at 1165. There exists a veritable plethora of factors to be considered in making a § 1404(a) determination, which include:

- 1) the convenience of the parties;
- 2) the convenience of material witnesses;

- 3) the availability of process to compel the presence of witnesses;
- 4) the cost of obtaining the presence of witnesses;
- 5) the relative ease of access to sources of proof;
- 6) calendar congestion;
- 7) where the events in issue took place; and
- 8) the interests of justice in general.

Id. at 1165; see also Apache Prods. Co. v. Employers Ins. Miss. 1994) (listing factors for consideration in § 1404(a) and in an opinion of the undersigned that the defendant has established heavily in favor of transfer.

The only relevant consideration that weighs in favor of forum. Normally, a plaintiff's choice of forum is entitled to Apache Prods., 154 F.R.D. at 653. This is particularly true in a district within which [it] resides." Id. (citing Sorrels Steel, Supp. 623 (S.D. Miss. 1986)). However, while the plaintiff has some degree of greater consideration, it is by no means determinative. 1165 (noting plaintiff's choice of forum not entitled to "the doctrine of *forum non conveniens*."). "[W]here the defendant does show significantly more convenience for the parties and witnesses, substantial impediments otherwise to transfer, the plaintiff's court should not hesitate to order a transfer." Apache Prods., 844 F. Supp. at 1165 (stating "choice of forum is only one of the factors in this case, the plaintiff himself resides in the Southern District of Mississippi. In the submission of the parties, it appears to this court that the only reason for this particular cause is that the plaintiff chose to file here.

When looking to all of the remaining factors, the Southern District of Mississippi is much more significant relationship to this action. For example, the witnesses and relevant evidence are there. The Southern District of Mississippi

the presence of unwilling witnesses, and most of the events in the Southern District of Mississippi. All of these weigh in favor of venue, and evidence also "necessarily implicate[s] the ease of conduct in the location which is near the relevant witnesses and documents." 1284, 1291 (5th Cir. 1994). Even when considering the relevant factors in the aggregate substantially outweigh the plaintiff's factors. Further, as already noted, calendar congestion is also an appropriate

Factors of public interest also have place in applying the difficulties follow for courts when litigation is piled up in order of being handled at its origin.

Embree, 760 F. Supp. at 105 (citing Gulf Oil, 330 U.S. at 105). This action. According to the most recent annual statistics of the United States Courts, the overall case load in the year 1996 was three hundred and sixty-eight (368) actions per District in the Northern District of Mississippi carried four hundred and thirty-eight (438) actions per District in the Southern District of Mississippi, and therefore the public interest would be best served by the Southern District of Mississippi. Gundle, 844 F. Supp. at 1167 (noting comparative docket congestion in the Southern District of Mississippi).

## II. CONCLUSION

Upon consideration of relevant factors and in the exercise of its discretion, the court is of the opinion that this cause should be transferred to the Southern District of Mississippi, for the convenience of the parties and in the interests of justice.

A separate order in accordance with this opinion shall issue. THIS the \_\_\_\_ day of February 1997.

\_\_\_\_\_  
United States District Judge

United States District Judge